



State of Wisconsin  
2005 – 2006 LEGISLATURE

LRB-2307/3  
RPN&RNK:wlj&kjf:jf

## 2005 BILL

1     **AN ACT** *to create* 101.148 and 895.07 of the statutes; **relating to:** contractor  
2           notices, claims against certain contractors and suppliers of dwellings, and  
3           providing a penalty.

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*Analysis by the Legislative Reference Bureau*

This bill requires contractors that contract to construct or remodel a person's residence to provide the dwelling's owner a brochure explaining the procedures created in this bill and to give written notice that he or she must follow those procedures before suing a contractor or window or door supplier. Under the bill, if the dwelling owner, which may be a condominium association, is concerned about a possible construction defect, the owner must give a written notice of claim to the contractor at least 90 working days before starting a court action against the contractor. The bill requires the written notice to detail the nature of the alleged construction defect, including any evidence that the owner of the dwelling has that substantiates the nature and cause of the defect.

After the contractor receives the notice, the bill gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the bill, if the claim is rejected at this point, or if the contractor fails to respond timely to the claim, the owner can start a court action against the contractor. If the contractor makes a settlement offer and the owner rejects the offer, the owner must do so with a written statement that includes the reasons for the rejection. The bill requires the owner to allow the contractor reasonable access to the dwelling if the contractor wants to

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inspect the alleged construction defect. After inspection, the bill allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the bill allows the contractor to submit a timely supplemental offer and requires the owner to respond to the supplemental offer under the same procedures as for the original offer.

If the property is inspected and requires some destructive testing, the bill requires the contractor to return the dwelling to its condition before the inspection. If the owner of a dwelling agrees to a contractor's settlement offer and the contractor does not follow through as agreed, the bill allows the owner to file in the court action the offer and acceptance as rebuttable evidence of an agreement.

Under the bill, if an owner of a dwelling rejects a reasonable settlement offer or does not permit the contractor to repair the defect under an agreed settlement offer, the owner's damages are limited to the fair market value of the costs of the repairs, or the amount of the monetary offer of settlement, and the owner may not recover punitive damages, costs, or attorney fees incurred after the rejection.

The bill allows an owner to repair a construction defect immediately without giving notice if the repair is necessary for health or safety.

If the dwelling owner begins a court action but fails to follow the procedures, and the contractor has provided the owner with the proper notice and brochure, under the bill the court must dismiss the action without prejudice. If the dwelling owner begins a court action but fails to follow the procedures, and the contractor does not provide the owner with the proper notice and brochure, under the bill the court stays the action and orders the parties to comply with the bill's provisions.

Under the bill, a contractor may obtain contribution from a window or door supplier for the cost of repairing the construction defect if the contractor follows procedures in the bill similar to those that apply to the contractor and owner regarding a defect, including notifying the supplier of the alleged defect and giving the supplier an opportunity to remedy the defect or to make an offer of settlement.

The bill requires the Department of Commerce to prepare a draft of a brochure that explains the process in this bill and to provide that draft to contractors.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 101.148 of the statutes is created to read:

2           **101.148 Contractor notices. (1) DEFINITIONS.** In this section:

3           (a) "Consumer" means the owner, tenant, or lessee of a dwelling, or an  
4           association or other entity with control over the common areas appurtenant to a  
5           dwelling.

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(b) “Contractor” means a person who enters into a written or oral contract with a consumer to construct or remodel a dwelling.

(c) “Dwelling” means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. “Dwelling” includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

(d) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not include maintenance work.

(2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written contract to construct or remodel a dwelling, or, if the parties enter into an oral contract, as soon as reasonably possible, but before commencing any work to construct or remodel a dwelling, the contractor shall give the consumer a copy of the brochure prepared under s. 895.07 (13) and a notice worded substantially as follows:

**NOTICE CONCERNING CONSTRUCTION**

**DEFECTS**

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer. For example, section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or pay for the construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier, ~~but failure to accept a reasonable offer~~

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## SECTION 1

(1) ~~may limit your recoverable damages.~~ All parties are bound by applicable warranty provisions.

(b) The notice required under par. (a) shall be conspicuous and in writing and may be included within the contract between the contractor and the consumer.

SECTION 2. 895.07 of the statutes is created to read:

895.07 Claims against contractors and suppliers. (1) DEFINITIONS. In this section:

(a) “Action” means a civil action or an arbitration under ch. 788.

(b) “Claim” means a request or demand to remedy a construction defect caused by a contractor or supplier related to the construction or remodeling of a dwelling.

(c) “Claimant” means the owner, tenant, or lessee of a dwelling, or an association, such as a condominium association or homeowners association, who has standing to sue a contractor or supplier regarding a construction defect.

(d) “Construction defect,” in those cases when the contractor or supplier has provided a warranty <sup>to a consumer</sup>, means the definition of “defect” in the warranty. In all other cases, “construction defect” means a deficiency in the ~~specifications, planning, supervision, construction~~ or remodeling of a dwelling that results from any of the following:

1. Defective material.
2. Violation of applicable codes.
3. Failure to follow accepted trade standards for workmanlike construction.

(e) “Contractor” means a person that enters into a written or oral contract with a potential claimant to construct or remodel a dwelling.

(f) “Dwelling” means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is

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1 situated that is devoted to residential use. “Dwelling” includes other existing  
2 structures on the immediate residential premises such as driveways, sidewalks,  
3 swimming pools, terraces, patios, fences, porches, garages, and basements.

4 (g) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not  
5 include maintenance work.

6 (h) “Serve” or “service” means personal service or delivery by certified mail,  
7 return receipt requested, to the last-known address of the addressee.

8 (i) “Supplier” means a person that manufactures or provides windows or doors  
9 for a dwelling.

10 (j) “Working day” means any day except Saturday, Sunday, and holidays  
11 designated in s. 230.35 (4) (a).

12 (2) NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than 90 working days before  
13 initiating an action against a contractor or supplier, a claimant shall serve written  
14 notice of claim on the contractor. Before initiating an action against a contractor or  
15 supplier, a claimant shall provide the contractor or supplier with the opportunity to  
16 respond to the claim and repair the construction defect under this section. The notice  
17 of claim shall state that the claimant asserts a construction defect claim. The notice  
18 of claim shall describe the claim in sufficient detail to explain the nature of the  
19 alleged construction defect ~~and the results of the construction defect~~ and shall offer  
20 the opportunity to correct the construction defect. The claimant shall include in the  
21 notice of claim ~~a description of the alleged construction defect and include a~~  
22 comprehensive description of all evidence that the claimant knows or possesses,  
23 including expert reports, that substantiates the nature and cause of the alleged  
24 construction defect.

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1 (b) Within 15 working days after the claimant serves notice of claim under par.  
2 (a), or within 25 working days if the contractor makes a claim for contribution from  
3 a supplier under sub. (7) (a), each contractor that has received the notice of claim  
4 shall serve on the claimant any of the following:

5 1. A written offer to remedy fully or partially the construction defect at no cost  
6 to the claimant. The offer shall include a description of any additional construction  
7 necessary to remedy the construction defect and a timetable for the completion of the  
8 construction.

9 2. A written offer to settle the claim by monetary payment.

10 3. A written offer including a combination of repairs and monetary payment.

11 4. A written statement that the contractor rejects the claim, and the contractor  
12 shall state in the written response to the claim the reason for rejecting the claim and  
13 include a comprehensive description of all evidence the contractor knows or  
14 possesses, including expert reports, that substantiates the reason for rejecting the  
15 claim. The contractor shall also include in the written response to the claim any  
16 settlement offer received from a supplier.

17 5. A proposal for the inspection of the dwelling under par. (c).

18 (c) If a proposal for inspection is made under par. (b), the claimant shall, within  
19 15 working days of receiving the contractor's proposal, provide the contractor and  
20 any supplier on whom a contribution claim has been made and its agents, experts,  
21 and consultants reasonable access to the dwelling to inspect the dwelling, document  
22 any alleged construction defects, and perform any testing required to evaluate fully  
23 the nature, extent, and cause of the claimed construction defects and the nature and  
24 extent of any repairs or replacements that may be necessary to remedy them. If  
25 destructive testing is required, the contractor shall give the claimant and all persons

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1 on whom a notice of claim or contribution claim has been served advance notice of  
2 the testing at least 5 working days before commencement of the testing and shall,  
3 after completion of the testing, return the dwelling to its pre-testing condition within  
4 a reasonable time after completion of the testing, at the contractor's expense. If any  
5 inspection or testing reveals a condition that requires additional testing to allow the  
6 contractor to evaluate fully the nature, cause, and extent of the construction defect,  
7 the contractor shall provide notice to the claimant and all persons on whom a notice  
8 of claim or contribution claim has been served of the need for the additional testing  
9 and the claimant shall provide reasonable access to the dwelling. If a claim is  
10 asserted on behalf of the owners of multiple dwellings, then the contractor shall be  
11 entitled to inspect each of the dwellings. The claimant shall either provide a specific  
12 day for the inspection upon reasonable notice for an inspection or require the  
13 contractor to request in writing a date for the inspection, at least 3 working days  
14 before the inspection.

15 (d) Within 10 working days following completion of the inspection and receipt  
16 of all testing results under par. (c), the contractor shall serve on the claimant a notice  
17 that includes any of the offers or statements under par. (b) 1. to 4.

18 (e) If the claimant rejects a settlement offer made by the contractor, the  
19 claimant shall, within 15 working days after receiving the offer, serve written notice  
20 of that rejection to the contractor. The notice shall include the reasons for the  
21 claimant's rejection of the contractor's offer. If the claimant believes that the  
22 settlement offer omits reference to any portion of the claim, or was unreasonable, the  
23 claimant's written notice shall include those items that the claimant believes were  
24 omitted and set forth the reasons why the claimant believes the settlement offer is

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1 unreasonable. The contractor shall forward the claimant's response to a supplier  
2 upon whom a contribution claim has been made.

3 (f) Upon receipt of a claimant's rejection and the reasons for the rejection, the  
4 contractor shall, within 5 working days after receiving the rejection, make a  
5 supplemental offer of repair or monetary payment to the claimant or serve on the  
6 claimant written notice that no additional offer will be made.

7 (g) If the claimant rejects the supplemental offer made by the contractor under  
8 par. (f) to remedy the construction defect or to settle the claim by monetary payment  
9 or a combination of each, the claimant shall serve written notice of the claimant's  
10 rejection on the contractor within 15 working days after receipt of the supplemental  
11 offer. The notice shall include the reasons for the claimant's rejection of the  
12 contractor's supplemental settlement offer. If the claimant believes the contractor's  
13 supplemental settlement offer is unreasonable, the claimant shall set forth in detail  
14 all reasons why the claimant believes the supplemental settlement offer is  
15 unreasonable. If the contractor declines to make a supplemental offer, or if the  
16 claimant rejects the supplemental offer, the claimant may bring an action against  
17 the contractor for the claim described in the notice of claim without further notice.

18 (h) If a claimant accepts any offer made under this subsection, and the  
19 contractor or supplier does not proceed to make the agreed upon monetary payment  
20 or remedy the construction defect within the agreed upon timetable, the claimant  
21 may bring an action against the contractor for the claim described in the notice of  
22 claim without further notice. The claimant may file the contractor's offer and  
23 claimant's acceptance in the circuit court action, and the offer and acceptance create  
24 a rebuttable presumption that a binding and valid settlement agreement has been  
25 created and should be enforced by the court.



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1           (i) If a claimant accepts a contractor's offer to repair a construction defect  
2       described in a notice of claim, the claimant shall provide the contractor and its  
3       agents, experts, and consultants reasonable access to the dwelling to perform and  
4       complete the construction by the timetable stated in the settlement offer.

5           (j) If a claimant receives a written statement that the contractor rejects the  
6       claim, or if the contractor does not respond to the claimant's notice, the claimant may  
7       bring an action against the contractor for the claim described in the notice of claim  
8       without further notice.

9           (k) If a claimant rejects a reasonable offer or reasonable supplemental offer or  
10      fails to comply in good faith with the requirements under this subsection, or does not  
11      permit the contractor to repair the construction defect pursuant to an accepted offer  
12      of settlement, the claimant may not recover an amount in excess of the fair market  
13      value of the cost of the repairs or the amount of a monetary offer of settlement. The  
14      trier of fact shall determine the reasonableness of an offer of settlement. If the  
15      claimant has rejected a reasonable offer or reasonable supplemental offer or fails to  
16      comply in good faith with the requirements of this subsection, and any other law  
17      allows the claimant to recover punitive damages, costs, and attorney fees, then the  
18      claimant may not recover those punitive damages, or the costs or attorney fees  
19      incurred after the date of its rejection. However, if the trier of fact determines that  
20      the contractor did not make a reasonable offer or supplemental offer or comply in  
21      good faith with the requirements of this subsection, the claimant may pursue claims  
22      under any other law that allows the claimant to recover punitive damages, costs, and  
23      attorney fees.

24           (L) If the claimant has served a contractor with a notice of claim relating to a  
25      construction defect and the contractor has rejected or not responded to the claim, the

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1 claimant shall, before filing an action against the supplier for a construction defect,  
2 serve the supplier with a copy of the notice of claim and provide the supplier with the  
3 opportunity to respond to the claim and repair the construction defect in the same  
4 manner as provided a contractor under this subsection.

5 (3) ACTION; DISMISSAL WITHOUT PREJUDICE. If the claimant files an action but fails  
6 to comply with the requirements of sub. (2) (a) and the contractor or supplier  
7 establishes that the claimant was provided the notice and brochure under s. 101.148  
8 (2), the circuit court shall dismiss the action without prejudice. If the claimant files  
9 an action but fails to comply with the requirements of sub. (2) (a) and the contractor  
10 or supplier cannot establish that the claimant was provided the notice and brochure  
11 under s. 101.148 (2), the circuit court shall stay the action and order the parties to  
12 comply with the requirements of sub. (2) (a) and s. 101.148 (2). Before filing an action  
13 against a supplier seeking contribution for a claim that a claimant has served on a  
14 contractor, the contractor shall serve the supplier with a notice of contribution claim  
15 under sub. (7). If the contractor files an action against a supplier but fails to serve  
16 the notice of contribution claim from the claimant, the circuit court shall stay the  
17 action until the contractor has complied with the requirements of this subsection and  
18 sub. (7).

19 (4) WARRANTY TERMS. The claimant and contractor or supplier are bound by any  
20 contractor or supplier warranty terms pertaining to products or services supplied for  
21 the dwelling.

22 (5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.  
23 A construction defect that is discovered after an initial claim or contribution claim  
24 notice has been provided may not be alleged in an action until the claimant or  
25 contractor has given the contractor or supplier that performed the original

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1 construction work or provided supplies written notice of the new claim or  
2 contribution claim regarding the alleged new construction defect based on the  
3 claimant's or contractor's most current records. The contractor or supplier shall have  
4 an opportunity to resolve the notice of the new claim or contribution claim in the  
5 manner provided in subs. (2) and (7).

6 **(6) ACTION OF ASSOCIATIONS.** (a) In this subsection, "association" means a  
7 homeowner's association, condominium association under s. 703.02 (1m), unit  
8 owner's association, or a nonprofit corporation created to own and operate portions  
9 of a planned community that may assess unit owners for the costs incurred in the  
10 performance of the association's obligations.

11 (b) A person may not provide or offer to provide anything of value, directly or  
12 indirectly, to a property manager of an association or to a member or officer of an  
13 association to induce the property manager, member, or officer to encourage the  
14 association to file or discourage the association from filing a claim for damages  
15 arising from a construction defect.

16 (c) A property manager retained by an association or a member or officer of an  
17 association may not accept anything of value, directly or indirectly, in exchange for  
18 encouraging to file or discouraging from filing a claim for damages on behalf of the  
19 association arising from a construction defect.

20 (d) A person who knowingly violates par. (b) or (c) may be fined not more than  
21 \$500 or imprisoned not more than 30 days, or both.

22 (e) An association may bring an action against a contractor or supplier to  
23 recover damages that result from construction defects in any of the common  
24 elements or limited common elements of a condominium, as defined in s. 703.02 (2)  
25 and (10) or to the extent it has standing to sue on behalf of its members.

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1           (7) CONTRIBUTION. (a) A contractor may not seek contribution from a supplier  
2       for a claim that a claimant makes against the contractor unless the contractor  
3       provides the supplier with a written notice of the claimant's claim and the  
4       contribution claim within 5 working days after the contractor's receipt of the claim,  
5       except that a contractor may make a contribution claim later than 5 days after the  
6       contractor's receipt of the initial claim if the contractor has not done any of the  
7       following:

- 8           1. Taken any action to repair the defect.
- 9           2. Performed destructive testing.
- 10          3. Authorized the claimant to take any action to repair the defect.
- 11          4. Interfered with or altered the property that is the subject of the claim.
- 12          5. Taken steps that would preclude a supplier's ability to offer to remedy the  
13       defect by making repairs.

14          (b) The contractor shall include in the notice of claim a description of the alleged  
15       construction defect and include a comprehensive description of all evidence that the  
16       contractor knows or possesses, including expert reports, that substantiates the  
17       nature and cause of the alleged construction defect.

18          (c) Within 15 working days after a supplier has received notice that a contractor  
19       is seeking contribution under par. (a), the supplier shall serve the contractor with  
20       any of the following:

- 21          1. A written offer to remedy fully or partially the construction defect at no cost  
22       to the claimant. The offer shall include a description of any additional construction  
23       necessary to remedy the construction defect and a timetable for the completion of the  
24       construction.

- 25          2. A written offer to settle the claim by monetary payment.

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1           3. A written offer including a combination of repairs and monetary payment.

2           4. A written statement that the supplier rejects the claim, and the supplier  
3 shall state in the written response to the claim the reason for rejecting the claim and  
4 include a comprehensive description of all evidence the supplier knows or possesses,  
5 including expert reports, that substantiates the reason for rejecting the claim.

6           5. A proposal for the inspection of the dwelling, following the procedures under  
7 par. (e).

8           (d) The contractor shall forward the supplier's response to the claimant. The  
9 supplier and contractor shall use their best efforts to coordinate their responses to  
10 claims and contribution claims.

11           (e) If a supplier proposes to inspect the dwelling that is the subject of the  
12 contribution claim, the contractor and claimant shall, within 15 working days after  
13 receiving the supplier's proposal, provide the supplier and its agents, experts, and  
14 consultants reasonable access to the dwelling to inspect the dwelling, document any  
15 alleged construction defects, and perform any testing required to evaluate fully the  
16 nature, extent, and cause of the claimed construction defects and the nature and  
17 extent of any repairs or replacements that may be necessary to remedy them. If  
18 destructive testing is required, the supplier shall give the contractor and claimant  
19 and all persons on whom a notice of claim or contribution claim has been served  
20 advance notice of the testing at least 5 working days before commencement of the  
21 testing and shall, after completion of the testing, return the dwelling to its  
22 pre-testing condition within a reasonable time after completion of the testing, at the  
23 supplier's expense. If any inspection or testing reveals a condition that requires  
24 additional testing to allow the supplier to evaluate fully the nature, cause, and extent  
25 of the construction defect, the supplier shall provide notice to the contractor and

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1 claimant and all persons on whom a notice of claim or contribution claim has been  
2 served of the need for the additional testing and the contractor and claimant shall  
3 provide reasonable access to the dwelling. If a claim is asserted on behalf of the  
4 contractor of multiple dwellings, then the supplier shall be entitled to inspect each  
5 of the dwellings. The contractor and claimant shall provide a specific day for the  
6 inspection upon reasonable notice for an inspection or require the supplier to request  
7 in writing a date for the inspection, at least 3 working days before the inspection.

8 (f) Within 10 working days following completion of the inspection and receipt  
9 of all testing results under par. (e), the supplier shall serve on the contractor a notice  
10 that includes any of the offers or statements under par. (c) 1. to 4.

11 (g) If the contractor rejects a settlement offer made by the supplier, the  
12 contractor shall, within 15 working days after receiving the offer, send written notice  
13 of that rejection to the supplier. The notice shall include the reasons for the  
14 contractor's rejection of the supplier's offer. If the contractor believes that the  
15 settlement offer omits reference to any portion of the claim, or was unreasonable, the  
16 contractor's written notice shall include those items that the contractor believes were  
17 omitted and set forth the reasons why the contractor believes the settlement offer is  
18 unreasonable.

19 (h) Upon receipt of a contractor's rejection and the reasons for the rejection, the  
20 supplier shall, within 5 working days of receiving the rejection, make a supplemental  
21 offer of repair or monetary payment to the contractor or serve on the contractor  
22 written notice that no additional offer will be made.

23 (i) If the contractor rejects the supplemental offer made by the supplier to  
24 remedy the construction defect or to settle the claim by monetary payment or a  
25 combination of each, the contractor shall, within 15 working days after receiving the

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1 offer, serve written notice of the contractor's rejection on the supplier. The notice  
2 shall include the reasons for the contractor's rejection of the supplier's supplemental  
3 settlement offer. If the contractor believes the supplier's supplemental settlement  
4 offer is unreasonable, the contractor shall set forth the reasons why the contractor  
5 believes the supplemental settlement offer is unreasonable. If supplier declines to  
6 make a supplemental offer, or if the contractor rejects the supplemental offer, the  
7 contractor may bring an action against the supplier for the claim described in the  
8 notice of claim without further notice.

9 (j) If a contractor accepts any offer made under this subsection, and the supplier  
10 does not proceed to make the monetary payment or remedy the construction defect  
11 within the agreed upon timetable, the contractor may bring an action against the  
12 supplier for the claim described in the notice of claim without further notice. The  
13 contractor may also file the supplier's offer and contractor's acceptance in the circuit  
14 court action, and the offer and acceptance create a rebuttable presumption that a  
15 binding and valid settlement agreement has been created and should be enforced by  
16 the court.

17 (k) If a contractor accepts a supplier's offer to repair a construction defect  
18 described in a notice of claim, the contractor, when appropriate, and the claimant  
19 shall provide the supplier and its agents, experts, and consultants reasonable access  
20 to the dwelling to perform and complete the construction by the timetable stated in  
21 the settlement offer.

22 (L) If a contractor rejects a reasonable offer, including any reasonable  
23 supplemental offer, made as provided under this subsection or does not permit the  
24 supplier to repair the construction defect pursuant to an accepted offer of settlement,  
25 the contractor may not recover an amount in excess of the fair market value of the

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1 cost of the repairs, or the amount of a monetary offer of settlement. The trier of fact  
2 shall determine the reasonableness of an offer of settlement. If the contractor has  
3 rejected a reasonable offer, including any reasonable supplemental offer, and any  
4 other law allows the contractor to recover punitive damages, costs, or attorney fees,  
5 then the contractor may not recover those punitive damages, or any costs or attorney  
6 fees incurred after the date of its rejection. However, if the trier of fact determines  
7 that the supplier did not make a reasonable offer or supplemental offer or comply in  
8 good faith with the requirements of this subsection, the contractor may pursue  
9 claims under any other law that allows the contractor to recover punitive damages,  
10 costs, and attorney fees.

11 (m) A contractor who is seeking contribution from a supplier and who elects to  
12 inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the  
13 inspection date and dwelling address, and whether destructive testing is  
14 contemplated, at least 5 working days before the inspection.

15 (8) FAILURE TO RESPOND TO NOTICE. If a person fails to respond to any notice  
16 served under this section, then any offer made in that notice is rejected.

17 (9) LIMITATION PERIOD. If, during the pendency of the notice, inspection, offer,  
18 acceptance, or repair process, an applicable limitation period would otherwise  
19 expire, the limitation period is tolled pending completion of the notice of claim  
20 process described in this section. This subsection shall not be construed to revive a  
21 limitation period that has expired before the date on which a claimant's written  
22 notice of claim is served or extend any applicable statute of repose.

23 (10) ALTERATION OF PROCEDURE. After service of the initial notice of claim and  
24 initial contribution claim, a claimant, a contractor, and a supplier may, by written



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1 mutual agreement, alter the procedure for the notice of claim process described in  
2 this section.

3 (11) APPLICATION TO OTHERS. This section does not apply to a contractor's or  
4 supplier's right to seek contribution, indemnity, or recovery against any party other  
5 than a supplier for a claim made against a contractor or supplier.

6 (12) HOMEOWNER REPAIRS. Without giving notice under this section, a  
7 homeowner may make immediate repairs to a dwelling to protect the health or safety  
8 of its occupants.

9 (13) BROCHURE. The department of commerce shall prepare a brochure  
10 explaining the process under this section and shall provide that brochure to  
11 contractors.

12 **SECTION 3. Initial applicability.**

13 (1) This act first applies to actions commenced on the effective date of this  
14 subsection.

15 **SECTION 4. Effective date.**

16 (1) This act takes effect on the first day of the 6th month beginning after  
17 publication.

18 (END)

2005 - 2006 LEGISLATURE

LPS: note to 14↓  
-2307/4  
LRB#051841-  
RPN&RNK:kjf&wlj:pg  
Stays

**SENATE SUBSTITUTE AMENDMENT ,  
TO 2005 SENATE BILL 448**

2/8 A 19

Regen

- 1 **AN ACT to create** 101.148 and 895.07 of the statutes; **relating to:** contractor  
2 notices, claims against certain contractors and suppliers of dwellings, and  
3 providing a penalty.

bill

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***Analysis by the Legislative Reference Bureau***

This substitute amendment requires contractors that contract to construct or remodel a person's residence to deliver to the person a brochure explaining the procedures created in this substitute amendment and that he or she must follow those procedures before suing a contractor or window or door supplier. Under the substitute amendment, if the dwelling owner, which may be a condominium association, is concerned about a possible construction defect, the owner must give a written notice of claim to the contractor at least 90 working days before starting a court action against the contractor. The substitute amendment requires the written notice to detail the nature of the alleged construction defect, including any evidence that the owner of the dwelling has that substantiates the nature and cause of the defect.

After the contractor receives the notice, the substitute amendment gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the substitute amendment, if the claim is rejected at this point, or if the contractor fails to respond timely to the claim, the owner can start a court action against the

bill

contractor. If the contractor makes a settlement offer and the owner rejects the offer, the owner must do so with a written statement that includes the reasons for the rejection. The ~~substitute amendment~~ requires the owner to allow the contractor reasonable access to the dwelling if the contractor wants to inspect the alleged construction defect. After inspection, the ~~substitute amendment~~ allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the ~~substitute amendment~~ allows the contractor to submit a timely supplemental offer and requires the owner to respond to the supplemental offer under the same procedures as for the original offer.

If the property is inspected and requires some destructive testing, the ~~substitute amendment~~ requires the contractor to return the dwelling to its condition before the inspection. If the owner of a dwelling agrees to a contractor's settlement offer and the contractor does not follow through as agreed, the ~~substitute amendment~~ allows the owner to file in the court action the offer and acceptance as rebuttable evidence of an agreement.

The ~~substitute amendment~~ allows an owner to repair a construction defect immediately without giving notice if the repair is necessary for health or safety.

If the dwelling owner begins a court action but fails to follow the procedures, and the contractor has provided the owner with the proper notice and brochure, under the ~~substitute amendment~~ the court must dismiss the action without prejudice. If the dwelling owner begins a court action but fails to follow the procedures, and the contractor does not provide the owner with the proper notice and brochure, under the ~~substitute amendment~~ the court stays the action and orders the parties to comply with the ~~substitute amendment's~~ provisions. bill's

Under the ~~substitute amendment~~, a contractor may obtain contribution from a window or door supplier for the cost of repairing the construction defect if the contractor follows procedures in the ~~substitute amendment~~ similar to those that apply to the contractor and owner regarding a defect, including notifying the supplier of the alleged defect and giving the supplier an opportunity to remedy the defect or to make an offer of settlement.

The ~~substitute amendment~~ requires the Department of Commerce to prepare a draft of a brochure that explains the process in this ~~substitute amendment~~ and to provide that draft to contractors. Contractors are required to give a copy of the brochure to the person whom the contractor contracts with to construct or remodel a dwelling. bill

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 1           SECTION 1. 101.148 of the statutes is created to read:
- 2           **101.148 Contractor notices.** (1) DEFINITIONS. In this section:

1 (a) “Consumer” means a person who enters into a written or oral contract with  
2 a contractor to construct or remodel a dwelling.

3 (b) “Contractor” means a person who enters into a written or oral contract with  
4 a consumer to construct or remodel a dwelling.

5 (c) “Deliver” means any of the following:

6 1. Depositing the document or written notice in the U.S. mail or with a  
7 commercial delivery service, addressed to the applicable person.

8 2. Giving the document or written notice personally to the applicable person.

9 (d) “Dwelling” means any premises or portion of a premises that is used as a  
10 home or a place of residence and that part of the lot or site on which the dwelling is  
11 situated that is devoted to residential use. “Dwelling” includes other existing  
12 structures on the immediate residential premises such as driveways, sidewalks,  
13 swimming pools, terraces, patios, fences, porches, garages, and basements.

14 (e) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not  
15 include maintenance or repair work.

16 (2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written  
17 contract to construct or remodel a dwelling, or, if the parties enter into an oral  
18 contract, as soon as reasonably possible, but before commencing any work to  
19 construct or remodel a dwelling, the contractor shall deliver to the consumer a copy  
20 of the brochure prepared under s. 895.07 (13) and a notice worded substantially as  
21 follows:

22 NOTICE CONCERNING CONSTRUCTION

23 DEFECTS

24 Wisconsin law contains important requirements you must follow before you  
25 may file a lawsuit for defective construction against the contractor who constructed

1 your dwelling or completed your remodeling project or against a window or door  
2 supplier or manufacturer. For example, section 895.07 (2) and (3) of the Wisconsin  
3 statutes requires you to deliver to the contractor a written notice of any construction  
4 conditions you allege are defective before you file your lawsuit, and you must provide  
5 your contractor or window or door supplier the opportunity to make an offer to repair  
6 or remedy the alleged construction defects. You are not obligated to accept any offer  
7 made by the contractor or window or door supplier. All parties are bound by  
8 applicable warranty provisions.

9 (b) The notice required under par. (a) shall be conspicuous and in writing and  
10 may be included within the contract between the contractor and the consumer.

11 **SECTION 2.** 895.07 of the statutes is created to read:

12 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this  
13 section:

14 (a) “Action” means a civil action or an arbitration under ch. 788.

15 (b) “Association” means a homeowner’s association, condominium association  
16 under s. 703.02 (1m), unit owner’s association, or a nonprofit corporation created to  
17 own and operate portions of a planned community that may assess unit owners for  
18 the costs incurred in the performance of the association’s obligations.

19 (c) “Claim” means a request or demand to remedy a construction defect caused  
20 by a contractor or supplier related to the construction or remodeling of a dwelling.

21 (d) “Claimant” means the owner, tenant, or lessee of a dwelling, or an  
22 association, who has standing to sue a contractor or supplier regarding a construction  
23 defect.

24 (e) “Construction defect,” in those cases when the contractor or supplier has  
25 provided a warranty to a consumer, means the definition of “defect” in the warranty.

1 In all other cases, “construction defect” means a deficiency in the construction or  
2 remodeling of a dwelling that results from any of the following:

3 1. Defective material.

4 2. Violation of applicable codes.

5 3. Failure to follow accepted trade standards for workmanlike construction.

6 (f) “Consumer” means a person who enters into a written or oral contract with  
7 a contractor to construct or remodel a dwelling.

8 (g) “Contractor” means a person that enters into a written or oral contract with  
9 a consumer to construct or remodel a dwelling.

10 (h) “Dwelling” means any premises or portion of a premises that is used as a  
11 home or a place of residence and that part of the lot or site on which the dwelling is  
12 situated that is devoted to residential use. “Dwelling” includes other existing  
13 structures on the immediate residential premises such as driveways, sidewalks,  
14 swimming pools, terraces, patios, fences, porches, garages, and basements.

15 (i) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not  
16 include maintenance work.

17 (j) “Serve” or “service” means personal service or delivery by certified mail,  
18 return receipt requested, to the last-known address of the addressee.

19 (k) “Supplier” means a person that manufactures or provides windows or doors  
20 for a dwelling.

21 (L) “Working day” means any day except Saturday, Sunday, and holidays  
22 designated in s. 230.35 (4) (a).

23 **(2) NOTICE AND OPPORTUNITY TO REPAIR.** (a) Before commencing an action  
24 against a contractor or supplier regarding a construction defect, a claimant shall do  
25 all of the following:

1           1. No later than 90 working days before commencing the action, deliver written  
2       notice on the contractor containing the circumstances of the claim in sufficient detail  
3       to explain the nature of the alleged defect and a description of the evidence that the  
4       claimant knows or possesses, including expert reports, that substantiates the nature  
5       and cause of the alleged construction defect.

6           2. Provide the contractor or supplier with the opportunity to repair or to remedy  
7       the alleged construction defect.

8           (b) Within 15 working days after the claimant serves notice of claim under par.  
9       (a), or within 25 working days if the contractor makes a claim for contribution from  
10      a supplier under sub. (7) (a), each contractor that has received the notice of claim  
11      shall serve on the claimant any of the following:

12          1. A written offer to repair or remedy the construction defect at no cost to the  
13      claimant. The offer shall include a description of any additional construction  
14      necessary to remedy the construction defect and a timetable for the completion of the  
15      construction.

16          2. A written offer to settle the claim by monetary payment.

17          3. A written offer including a combination of repairs and monetary payment.

18          4. A written statement that the contractor rejects the claim. The contractor  
19      shall state in the written response to the claim the reason for rejecting the claim and  
20      include a comprehensive description of all evidence the contractor knows or  
21      possesses, including expert reports, that substantiates the reason for rejecting the  
22      claim. The contractor shall also include in the written response to the claim any  
23      settlement offer received from a supplier.

24          5. A proposal for inspection of the dwelling under par. (c).

1           (c) If a proposal for inspection is made under par. (b), the claimant shall, within  
2       15 working days of receiving the contractor's proposal, provide the contractor and  
3       any supplier on whom a contribution claim has been made and its agents, experts,  
4       and consultants reasonable access to the dwelling to inspect the dwelling, document  
5       any alleged construction defects, and perform any testing required to evaluate fully  
6       the nature, extent, and cause of the claimed construction defects and the nature and  
7       extent of any repairs or replacements that may be necessary to remedy them. If  
8       destructive testing is required, the contractor shall deliver the claimant and all  
9       persons on whom a notice of claim or contribution claim has been served advance  
10      notice of the testing at least 5 working days before commencement of the testing and  
11      shall, after completion of the testing, return the dwelling to its pre-testing condition  
12      within a reasonable time after completion of the testing, at the contractor's expense.  
13      If any inspection or testing reveals a condition that requires additional testing to  
14      allow the contractor to evaluate fully the nature, cause, and extent of the  
15      construction defect, the contractor shall deliver notice to the claimant and all persons  
16      on whom a notice of claim or contribution claim has been served of the need for the  
17      additional testing and the claimant shall provide reasonable access to the dwelling.  
18      If a claim is asserted on behalf of the owners of multiple dwellings, then the  
19      contractor shall be entitled to inspect each of the dwellings subject to the claim. The  
20      claimant shall either provide a specific day for the inspection upon reasonable notice  
21      for an inspection or require the contractor to request in writing a date for the  
22      inspection, at least 3 working days before the inspection.

23           (d) Within 10 working days following completion of the inspection and testing  
24      under par. (c), the contractor shall serve on the claimant a notice that includes any  
25      of the offers or statements under par. (b) 1. to 4.



1           (e) If the claimant rejects a settlement offer made by the contractor, the  
2 claimant shall, within 15 working days after receiving the offer, serve written notice  
3 of that rejection to the contractor. The notice shall include the reasons for the  
4 claimant's rejection of the contractor's offer. If the claimant believes that the  
5 settlement offer omits reference to any portion of the claim, or was unreasonable, the  
6 claimant's written notice shall include those items that the claimant believes were  
7 omitted and set forth the reasons why the claimant believes the settlement offer is  
8 unreasonable. The contractor shall deliver the claimant's response to a supplier  
9 upon whom a contribution claim has been made.

10           (f) Upon receipt of a claimant's rejection and the reasons for the rejection, the  
11 contractor shall, within 5 working days after receiving the rejection, serve the  
12 claimant a written supplemental offer to repair or to remedy the construction defect  
13 or serve on the claimant written notice that no additional offer will be made.

14           (g) If the claimant rejects the supplemental offer made by the contractor under  
15 par. (f) to remedy the construction defect or to settle the claim by monetary payment  
16 or a combination of each, the claimant shall serve written notice of the claimant's  
17 rejection on the contractor within 15 working days after receipt of the supplemental  
18 offer. The notice shall include the reasons for the claimant's rejection of the  
19 contractor's supplemental settlement offer. If the claimant believes the contractor's  
20 supplemental settlement offer is unreasonable, the claimant shall set forth the  
21 reasons why the claimant believes the supplemental settlement offer is  
22 unreasonable. If the contractor declines to make a supplemental offer, or if the  
23 claimant rejects the supplemental offer, the claimant may bring an action against  
24 the contractor for the claim described in the notice of claim without further notice.

1           (h) If a claimant accepts any offer made under this subsection, and the  
2           contractor or supplier does not proceed to make the agreed to monetary payment or  
3           agreed to repair of the construction defect within the agreed upon timetable, the  
4           claimant may bring an action against the contractor for the claim described in the  
5           notice of claim without further notice.

6           (i) If a claimant accepts a contractor's offer to repair a construction defect  
7           described in a notice of claim, the claimant shall provide the contractor and its  
8           agents, experts, and consultants reasonable access to the dwelling to perform and  
9           complete the construction by the timetable stated in the settlement offer.

10          (j) If a claimant receives a written statement that the contractor rejects the  
11          claim, or if the contractor does not respond to the claimant's notice, the claimant may  
12          bring an action against the contractor for the claim described in the notice of claim  
13          without further notice.

14          (k) If a claimant commences an action against a supplier and the supplier has  
15          not been provided notice of the claim by the contractor and an opportunity to repair  
16          or to remedy the claim pursuant to sub. (7), the claimant shall, before commencing  
17          and maintaining a direct action against a supplier for a construction defect, serve the  
18          supplier with a copy of the notice of claim and provide the supplier an opportunity  
19          to repair or to remedy the construction defect in the same manner as provided a  
20          contractor under this section.

21          **(3) ACTION; DISMISSAL WITHOUT PREJUDICE.** If the claimant commences an action  
22          but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier  
23          establishes that the claimant was provided the notice and brochure under s. 101.148  
24          (2), the circuit court or arbitrator shall dismiss the action without prejudice. If the  
25          claimant commences an action but fails to comply with the requirements of sub. (2)

1 (a) and the contractor or supplier cannot establish that the notice and brochure was  
2 delivered to the claimant under s. 101.148 (2), the circuit court or arbitrator shall  
3 stay the action and order the parties to comply with the requirements of sub. (2) (a)  
4 and s. 101.148 (2). Before commencing an action against a supplier seeking  
5 contribution for a claim that a claimant has served on a contractor, the contractor  
6 shall serve the supplier with a notice of contribution claim under sub. (7). If the  
7 contractor commences an action against a supplier but fails to serve the notice of  
8 contribution claim, the circuit court or arbitrator shall stay the action until the  
9 contractor has complied with the requirements of this subsection and sub. (7).

10 (4) WARRANTY TERMS. The claimant and contractor or supplier are bound by any  
11 contractor or supplier warranty terms pertaining to products or services supplied for  
12 the dwelling.

13 (5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.  
14 A construction defect that is discovered after an initial claim or contribution claim  
15 notice has been provided may not be alleged in an action until the claimant or  
16 contractor has served the contractor or supplier written notice of the new claim or  
17 contribution claim regarding the alleged new construction defect. The contractor or  
18 supplier shall have an opportunity to resolve the notice of the new claim or  
19 contribution claim in the manner provided in subs. (2) and (7).

20 (6) ACTION OF CONTRACTOR OR SUPPLIER. In any action initiated by a contractor  
21 or supplier in which a claimant raises an affirmative defense or counterclaim  
22 alleging a construction defect, the claimant is not required to comply with this  
23 section.

24 (7) CONTRIBUTION. (a) Before commencing an action seeking contribution from  
25 a supplier for a claim that a claimant makes against the contractor, the contractor

1 shall serve the supplier with a written notice of the claimant's claim and a  
2 contribution claim within 5 working days after the contractor's receipt of the claim,  
3 except that a contractor may make a contribution claim later than 5 days after the  
4 contractor's receipt of the initial claim if the contractor has not done any of the  
5 following:

- 6 1. Taken any action to repair the defect.
- 7 2. Performed destructive testing.
- 8 3. Authorized the claimant to take any action to repair the defect.
- 9 4. Interfered materially with or altered the property that is the subject of the  
10 claim.
- 11 5. Materially precluded a supplier's ability to offer to remedy the defect by  
12 making repairs.

13 (b) Before commencing an action against a supplier, a contractor shall provide  
14 the supplier with the opportunity to respond to the contribution claim and repair the  
15 alleged construction defect under this section. The notice of contribution claim shall  
16 state that the contractor asserts a construction defect claim. The notice of  
17 contribution claim shall describe the contribution claim in sufficient detail to explain  
18 the nature of the alleged construction defect and shall offer the opportunity to correct  
19 the construction defect. The contractor shall include in the notice of claim a  
20 description of the alleged construction defect and include a comprehensive  
21 description of all evidence that the contractor knows or possesses, including expert  
22 reports, that substantiates the nature and cause of the alleged construction defect.

23 (c) Within 15 working days after a supplier has received notice that a contractor  
24 is seeking contribution under par. (a), the supplier shall serve the contractor with  
25 any of the following:

1           1. A written offer to remedy fully or partially the construction defect at no cost  
2           to the claimant. The offer shall include a description of any additional construction  
3           necessary to remedy the construction defect and a timetable for the completion of the  
4           construction.

5           2. A written offer to settle the claim by monetary payment.

6           3. A written offer including a combination of repairs and monetary payment.

7           4. A written statement that the supplier rejects the claim. The supplier shall  
8           state in the written response to the claim the reason for rejecting the claim and  
9           include a comprehensive description of all evidence the supplier knows or possesses,  
10          including expert reports, that substantiates the reason for rejecting the claim.

11          5. A proposal for the inspection of the dwelling, following the procedures under  
12          par. (e).

13          (d) The contractor shall forward the supplier's response to the claimant. The  
14          supplier and contractor shall use their best efforts to coordinate their responses to  
15          claims and contribution claims.

16          (e) If a supplier proposes to inspect the dwelling that is the subject of the  
17          contribution claim, the contractor and claimant shall, within 15 working days after  
18          receiving the supplier's proposal, provide the supplier and its agents, experts, and  
19          consultants reasonable access to the dwelling to inspect the dwelling, document any  
20          alleged construction defects, and perform any testing required to evaluate fully the  
21          nature, extent, and cause of the claimed construction defects and the nature and  
22          extent of any repairs or replacements that may be necessary to remedy them. If  
23          destructive testing is required, the supplier shall give the contractor and claimant  
24          and all persons on whom a notice of claim or contribution claim has been served  
25          advance notice of the testing at least 5 working days before commencement of the

1 testing and shall, after completion of the testing, return the dwelling to its  
2 pre-testing condition within a reasonable time after completion of the testing, at the  
3 supplier's expense. If any inspection or testing reveals a condition that requires  
4 additional testing to allow the supplier to evaluate fully the nature, cause, and extent  
5 of the construction defect, the supplier shall provide notice to the contractor and  
6 claimant and all persons on whom a notice of claim or contribution claim has been  
7 served of the need for the additional testing and the contractor and claimant shall  
8 provide reasonable access to the dwelling. If a claim is asserted on behalf of the  
9 contractor of multiple dwellings, then the supplier shall be entitled to inspect each  
10 of the dwellings. The contractor and claimant shall provide a specific day for the  
11 inspection upon reasonable notice for an inspection or require the supplier to request  
12 in writing a date for the inspection, at least 3 working days before the inspection.

13 (f) Within 10 working days following completion of the inspection and testing  
14 under par. (e), the supplier shall serve on the contractor a notice that includes any  
15 of the offers or statements under par. (c) 1. to 4.

16 (g) If the contractor rejects a settlement offer made by the supplier, the  
17 contractor shall, within 15 working days after receiving the offer, send written notice  
18 of that rejection to the supplier. The notice shall include the reasons for the  
19 contractor's rejection of the supplier's offer. If the contractor believes that the  
20 settlement offer omits reference to any portion of the claim, or was unreasonable, the  
21 contractor's written notice shall include those items that the contractor believes were  
22 omitted and set forth the reasons why the contractor believes the settlement offer is  
23 unreasonable.

24 (h) Upon receipt of a contractor's rejection and the reasons for the rejection, the  
25 supplier shall, within 5 working days of receiving the rejection, make a supplemental

1 offer of repair or monetary payment to the contractor or serve on the contractor  
2 written notice that no additional offer will be made.

3 (i) If the contractor rejects the supplemental offer made by the supplier to  
4 remedy the construction defect or to settle the claim by monetary payment or a  
5 combination of each, the contractor shall, within 15 working days after receiving the  
6 offer, serve written notice of the contractor's rejection on the supplier. The notice  
7 shall include the reasons for the contractor's rejection of the supplier's supplemental  
8 settlement offer. If the contractor believes the supplier's supplemental settlement  
9 offer is unreasonable, the contractor shall set forth the reasons why the contractor  
10 believes the supplemental settlement offer is unreasonable. If supplier declines to  
11 make a supplemental offer, or if the contractor rejects the supplemental offer, the  
12 contractor may bring an action against the supplier for the claim described in the  
13 notice of claim without further notice.

14 (j) If a contractor accepts any offer made under this subsection, and the supplier  
15 does not proceed to make the monetary payment or remedy the construction defect  
16 within the agreed upon timetable, the contractor may bring an action against the  
17 supplier for the claim described in the notice of claim without further notice. The  
18 contractor may also file the supplier's offer and contractor's acceptance in the circuit  
19 court action, and the offer and acceptance create a rebuttable presumption that a  
20 binding and valid settlement agreement has been created and should be enforced by  
21 the court.

22 (k) If a contractor accepts a supplier's offer to repair a construction defect  
23 described in a notice of claim, the contractor, when appropriate, and the claimant  
24 shall provide the supplier and its agents, experts, and consultants reasonable access

1 to the dwelling to perform and complete the construction by the timetable stated in  
2 the settlement offer.

3 (L) If a contractor receives a written statement that the supplier rejects the  
4 claim, or if the supplier does not respond to the contractor's notice, the contractor  
5 may bring an action against the supplier for the claim described in the notice of claim  
6 without further notice.

7 (m) A contractor who is seeking contribution from a supplier and who elects to  
8 inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the  
9 inspection date and dwelling address, and whether destructive testing is  
10 contemplated, at least 5 working days before the inspection.

11 (8) FAILURE TO RESPOND TO NOTICE. If a person fails to respond to any notice  
12 served under this section, then any offer made in that notice is rejected.

13 (9) LIMITATION PERIOD. If, during the pendency of the notice, inspection, offer,  
14 acceptance, or repair process, an applicable limitation period would otherwise  
15 expire, the limitation period is tolled pending completion of the notice of claim  
16 process described in this section. This subsection shall not be construed to revive a  
17 limitation period that has expired before the date on which a claimant's written  
18 notice of claim is served or extend any applicable statute of repose.

19 (10) ALTERATION OF PROCEDURE. After service of the initial notice of claim and  
20 initial contribution claim, a claimant, a contractor, and a supplier may, by written  
21 mutual agreement, alter the procedure for the notice of claim process described in  
22 this section.

23 (11) APPLICATION TO OTHERS. This section does not apply to a contractor's or  
24 supplier's right to seek contribution, indemnity, or recovery against any party other  
25 than a supplier for a claim made against a contractor or supplier.



**(12) HOMEOWNER REPAIRS.** Without giving notice under this section, a homeowner may make immediate repairs to a dwelling to protect the health or safety of its occupants.

**(13) BROCHURE.** The department of commerce shall prepare a brochure explaining the process under this section and shall provide that brochure to contractors.

### SECTION 3. Initial applicability.

(1) This act first applies to actions commenced on the effective date of this subsection.

**SECTION 4. Effective date.**

(1) This act takes effect on the first day of the 6th month beginning after publication.

**(END)**



State of Wisconsin  
2005 - 2006 LEGISLATURE

-2307/5-  
LRBs 0546/1

RPN&RNK:kjf/wlj:js

stays

2/16 PM

SENATE SUBSTITUTE AMENDMENT,

TO 2005 SENATE BILL 448

2005 B.I.C.

✓  
A.S.A.P.

Regen

- 1 AN ACT *to create* 101.148 and 895.07 of the statutes; **relating to:** contractor  
2 notices, claims against certain contractors and suppliers of dwellings, and  
3 providing a penalty.

b.c.c.

***Analysis by the Legislative Reference Bureau***

This ~~substitute amendment~~ requires contractors that contract to construct or remodel a person's residence to deliver to the person a brochure explaining the procedures created in this ~~substitute amendment~~ and that he or she must follow those procedures before suing a contractor or window or door supplier. Under the ~~substitute amendment~~, if the dwelling owner, which may be a condominium association, is concerned about a possible construction defect, the owner must give a written notice of claim to the contractor at least 90 working days before starting a court action against the contractor. The ~~substitute amendment~~ requires the written notice to detail the nature of the alleged construction defect, including any evidence that the owner of the dwelling has that substantiates the nature and cause of the defect.

After the contractor receives the notice, the ~~substitute amendment~~ gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the ~~substitute amendment~~, if the claim is rejected at this point, or if the contractor fails to respond timely to the claim, the owner can start a court action against the

contractor. If the contractor makes a settlement offer and the owner rejects the offer, the owner must do so with a written statement that includes the reasons for the rejection. The ~~substitute amendment~~ requires the owner to allow the contractor reasonable access to the dwelling if the contractor wants to inspect the alleged construction defect. After inspection, the ~~substitute amendment~~ allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the ~~substitute amendment~~ allows the contractor to submit a timely supplemental offer and requires the owner to respond to the supplemental offer under the same procedures as for the original offer.

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The ~~substitute amendment~~ allows an owner to repair a construction defect immediately without giving notice if the repair is necessary for health or safety.

If the dwelling owner begins a court action but fails to follow the procedures, and the contractor has provided the owner with the proper notice and brochure, under the ~~substitute amendment~~ the court must dismiss the action without prejudice. If the dwelling owner begins a court action but fails to follow the procedures, and the contractor does not provide the owner with the proper notice and brochure, under the ~~substitute amendment~~ the court stays the action and orders the parties to comply with the substitute amendment's provisions.

Under the ~~substitute amendment~~, a contractor may obtain contribution from a window or door supplier for the cost of repairing the construction defect if the contractor follows procedures in the ~~substitute amendment~~ similar to those that apply to the contractor and owner regarding a defect, including notifying the supplier of the alleged defect and giving the supplier an opportunity to remedy the defect or to make an offer of settlement.

The ~~substitute amendment~~ requires the Department of Commerce to prepare a draft of a brochure that explains the process in this substitute amendment and to provide that draft to contractors. Contractors are required to give a copy of the brochure to the person whom the contractor contracts with to construct or remodel a dwelling.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

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10 home or a place of residence and that part of the lot or site on which the dwelling is  
11 situated that is devoted to residential use. “Dwelling” includes other existing  
12 structures on the immediate residential premises such as driveways, sidewalks,  
13 swimming pools, terraces, patios, fences, porches, garages, and basements.

14 (e) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not  
15 include maintenance or repair work.

16 (2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written  
17 contract to construct or remodel a dwelling, or, if the parties enter into an oral  
18 contract, as soon as reasonably possible, but before commencing any work to  
19 construct or remodel a dwelling, the contractor shall deliver to the consumer a copy  
20 of the brochure prepared under s. 895.07 (13) and a notice worded substantially as  
21 follows:

## 22 NOTICE CONCERNING CONSTRUCTION

### 23 DEFECTS

24 Wisconsin law contains important requirements you must follow before you  
25 may file a lawsuit for defective construction against the contractor who constructed

1 your dwelling or completed your remodeling project or against a window or door  
2 supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes  
3 requires you to deliver to the contractor a written notice of any construction  
4 conditions you allege are defective before you file your lawsuit, and you must provide  
5 your contractor or window or door supplier the opportunity to make an offer to repair  
6 or remedy the alleged construction defects. You are not obligated to accept any offer  
7 made by the contractor or window or door supplier. All parties are bound by  
8 applicable warranty provisions.

9 (b) The notice required under par. (a) shall be conspicuous and in writing and  
10 may be included within the contract between the contractor and the consumer.

11 **SECTION 2.** 895.07<sup>✓</sup> of the statutes is created to read:

12 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this  
13 section:

14 (a) "Action" means a civil action or an arbitration under ch. 788.

15 (b) "Association" means a homeowner's association, condominium association  
16 under s. 703.02 (1m), unit owner's association, or a nonprofit corporation created to  
17 own and operate portions of a planned community that may assess unit owners for  
18 the costs incurred in the performance of the association's obligations.

19 (c) "Claim" means a request or demand to remedy a construction defect caused  
20 by a contractor or supplier related to the construction or remodeling of a dwelling.

21 (d) "Claimant" means the owner, tenant, or lessee of a dwelling, or an  
22 association, who has standing to sue a contractor or supplier regarding a  
23 construction defect.

24 (e) "Construction defect," in those cases when the contractor or supplier has  
25 provided a warranty to a consumer, means the definition of "defect" in the warranty.

1 In all other cases, “construction defect” means a deficiency in the construction or  
2 remodeling of a dwelling that results from any of the following:

3 1. Defective material.

4 2. Violation of applicable codes.

5 3. Failure to follow accepted trade standards for workmanlike construction.

6 (f) “Consumer” means a person who enters into a written or oral contract with  
7 a contractor to construct or remodel a dwelling.

8 (g) “Contractor” means a person that enters into a written or oral contract with  
9 a consumer to construct or remodel a dwelling.

10 (h) “Dwelling” means any premises or portion of a premises that is used as a  
11 home or a place of residence and that part of the lot or site on which the dwelling is  
12 situated that is devoted to residential use. “Dwelling” includes other existing  
13 structures on the immediate residential premises such as driveways, sidewalks,  
14 swimming pools, terraces, patios, fences, porches, garages, and basements.

15 (i) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not  
16 include maintenance or repair work.

17 (j) “Serve” or “service” means personal service or delivery by certified mail,  
18 return receipt requested, to the last-known address of the addressee.

19 (k) “Supplier” means a person that manufactures or provides windows or doors  
20 for a dwelling.

21 (L) “Working day” means any day except Saturday, Sunday, and holidays  
22 designated in s. 230.35 (4) (a).

23 (2) NOTICE AND OPPORTUNITY TO REPAIR. (a) Before commencing an action  
24 against a contractor or supplier regarding a construction defect, a claimant shall do  
25 all of the following:

1           1. No later than 90 working days before commencing the action, deliver written  
2 notice to the contractor containing a description of the claim in sufficient detail to  
3 explain the nature of the alleged defect and a description of the evidence that the  
4 claimant knows or possesses, including expert reports, that substantiates the nature  
5 and cause of the alleged construction defect.

6           2. Provide the contractor or supplier with the opportunity to repair or to remedy  
7 the alleged construction defect.

8           (b) Within 15 working days after the claimant serves notice of claim under par.  
9 (a), or within 25 working days if the contractor makes a claim for contribution from  
10 a supplier under sub. (7) (a), each contractor that has received the notice of claim  
11 shall serve on the claimant any of the following:

12           1. A written offer to repair or remedy the construction defect at no cost to the  
13 claimant. The offer shall include a description of any additional construction  
14 necessary to remedy the construction defect and a timetable for the completion of the  
15 construction.

16           2. A written offer to settle the claim by monetary payment.

17           3. A written offer including a combination of repairs and monetary payment.

18           4. A written statement that the contractor rejects the claim. The contractor  
19 shall state in the written response to the claim the reason for rejecting the claim and  
20 include a comprehensive description of all evidence the contractor knows or  
21 possesses, including expert reports, that substantiates the reason for rejecting the  
22 claim. The contractor shall also include in the written response to the claim any  
23 settlement offer received from a supplier.

24           5. A proposal for inspection of the dwelling under par. (c).

(c) If a proposal for inspection is made under par. (b), the claimant shall, within 15 working days of receiving the contractor's proposal, provide the contractor and any supplier on whom a contribution claim has been made and its agents, experts, and consultants reasonable access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the contractor shall deliver the claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 5 working days before commencement of the testing and shall, after completion of the testing, return the dwelling to its pre-testing condition within a reasonable time after completion of the testing, at the contractor's expense. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to evaluate fully the nature, cause, and extent of the construction defect, the contractor shall deliver notice to the claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the claimant shall provide reasonable access to the dwelling. If a claim is asserted on behalf of the owners of multiple dwellings, then the contractor shall be entitled to inspect each of the dwellings subject to the claim. The claimant shall either provide a specific day for the inspection upon reasonable notice for an inspection or require the contractor to request in writing a date for the inspection, at least 3 working days before the inspection.

(d) Within 10 working days following completion of the inspection and testing under par. (c), the contractor shall serve on the claimant a notice that includes any of the offers or statements under par. (b) 1. to 4.



1 (e) If the claimant rejects a settlement offer made by the contractor, the  
2 claimant shall, within 15 working days after receiving the offer, serve written notice  
3 of that rejection to the contractor. The notice shall include the reasons for the  
4 claimant's rejection of the contractor's offer. If the claimant believes that the  
5 settlement offer omits reference to any portion of the claim, or was unreasonable, the  
6 claimant's written notice shall include those items that the claimant believes were  
7 omitted and set forth the reasons why the claimant believes the settlement offer is  
8 unreasonable. The contractor shall deliver the claimant's response to a supplier  
9 upon whom a contribution claim has been made.

10 (f) Upon receipt of a claimant's rejection and the reasons for the rejection, the  
11 contractor shall, within 5 working days after receiving the rejection, serve the  
12 claimant a written supplemental offer to repair or to remedy the construction defect  
13 or serve on the claimant written notice that no additional offer will be made.

14 (g) If the claimant rejects the supplemental offer made by the contractor under  
15 par. (f) to remedy the construction defect or to settle the claim by monetary payment  
16 or a combination of each, the claimant shall serve written notice of the claimant's  
17 rejection on the contractor within 15 working days after receipt of the supplemental  
18 offer. The notice shall include the reasons for the claimant's rejection of the  
19 contractor's supplemental settlement offer. If the claimant believes the contractor's  
20 supplemental settlement offer is unreasonable, the claimant shall set forth the  
21 reasons why the claimant believes the supplemental settlement offer is  
22 unreasonable. If the contractor declines to make a supplemental offer, or if the  
23 claimant rejects the supplemental offer, the claimant may bring an action against  
24 the contractor for the claim described in the notice of claim without further notice.

1 (h) If a claimant accepts any offer made under this subsection, and the  
2 contractor or supplier does not proceed to repair or remedy the construction defect  
3 under the terms of the offer or within the agreed upon timetable, the claimant may  
4 bring an action against the contractor or supplier for the claim described in the notice  
5 of claim without further notice.

6 (i) If a claimant accepts a contractor's offer to repair a construction defect  
7 described in a notice of claim, the claimant shall provide the contractor and its  
8 agents, experts, and consultants reasonable access to the dwelling to perform and  
9 complete the construction by the timetable stated in the settlement offer.

10 (j) If a claimant receives a written statement that the contractor rejects the  
11 claim, or if the contractor does not respond to the claimant's notice, the claimant may  
12 bring an action against the contractor for the claim described in the notice of claim  
13 without further notice.

14 (k) If a claimant commences an action against a supplier and the supplier has  
15 not been provided notice of the claim by the contractor and an opportunity to repair  
16 or remedy the construction defect described in the claim as provided under to sub.  
17 (7), the court or arbitrator shall dismiss without prejudice or stay the action until the  
18 claimant serves the supplier with a copy of the notice of claim and provides the  
19 supplier an opportunity to repair or remedy the construction defect in the same  
20 manner as provided a contractor under this section.

21 (3) ACTION; DISMISSAL WITHOUT PREJUDICE. If the claimant commences an action  
22 but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier  
23 establishes that the claimant was provided the notice and brochure under s. 101.148  
24 (2), the circuit court or arbitrator shall dismiss the action without prejudice. If the  
25 claimant commences an action but fails to comply with the requirements of sub. (2)

(a) and the contractor or supplier cannot establish that the notice and brochure was delivered to the claimant under s. 101.148 (2), the circuit court or arbitrator shall stay the action and order the parties to comply with the requirements of sub. (2) (a) and s. 101.148 (2). Before commencing an action against a supplier seeking contribution for a claim that a claimant has served on a contractor, the contractor shall serve the supplier with a notice of contribution claim under sub. (7). If the contractor commences an action against a supplier but fails to serve the notice of contribution claim, the circuit court or arbitrator shall stay the action until the contractor has complied with the requirements of this subsection and sub. (7).

(4) WARRANTY TERMS. The claimant and contractor or supplier are bound by any contractor or supplier warranty terms pertaining to products or services supplied for the dwelling.

(5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR. A construction defect that is discovered after an initial claim or contribution claim notice has been provided may not be alleged in an action until the claimant or contractor has served the contractor or supplier written notice of the new claim or contribution claim regarding the alleged new construction defect. The contractor or supplier shall have an opportunity to resolve the notice of the new claim or contribution claim in the manner provided in subs. (2) and (7).

(6) ACTION OF CONTRACTOR OR SUPPLIER. In any action initiated by a contractor or supplier in which a claimant raises an affirmative defense or counterclaim alleging a construction defect, the claimant is not required to comply with this section.

(7) CONTRIBUTION. (a) Before commencing an action seeking contribution from a supplier for a claim that a claimant makes against the contractor, the contractor

1 shall serve the supplier with a written notice of the claimant's claim and a  
2 contribution claim within 5 working days after the contractor's receipt of the claim,  
3 except that a contractor may make a contribution claim later than 5 days after the  
4 contractor's receipt of the initial claim if the contractor has not done any of the  
5 following:

- 6 1. Taken any action to repair the defect.
- 7 2. Performed destructive testing.
- 8 3. Authorized the claimant to take any action to repair the defect.
- 9 4. Interfered materially with or altered the property that is the subject of the  
10 claim.
- 11 5. Materially precluded a supplier's ability to offer to remedy the defect by  
12 making repairs.

13 (b) Before commencing an action against a supplier, a contractor shall provide  
14 the supplier with the opportunity to respond to the contribution claim and repair the  
15 alleged construction defect under this section. The notice of contribution claim shall  
16 state that the contractor asserts a construction defect claim. The notice of  
17 contribution claim shall describe the contribution claim in sufficient detail to explain  
18 the nature of the alleged construction defect and shall offer the opportunity to correct  
19 the construction defect. The contractor shall include in the notice of claim a  
20 description of the alleged construction defect and include a comprehensive  
21 description of all evidence that the contractor knows or possesses, including expert  
22 reports, that substantiates the nature and cause of the alleged construction defect.

23 (c) Within 15 working days after a supplier has received notice that a contractor  
24 is seeking contribution under par. (a), the supplier shall serve the contractor with  
25 any of the following:

1           1. A written offer to remedy fully or partially the construction defect at no cost  
2 to the claimant. The offer shall include a description of any additional construction  
3 necessary to remedy the construction defect and a timetable for the completion of the  
4 construction.

5           2. A written offer to settle the claim by monetary payment.

6           3. A written offer including a combination of repairs and monetary payment.

7           4. A written statement that the supplier rejects the claim. The supplier shall  
8 state in the written response to the claim the reason for rejecting the claim and  
9 include a comprehensive description of all evidence the supplier knows or possesses,  
10 including expert reports, that substantiates the reason for rejecting the claim.

11          5. A proposal for the inspection of the dwelling, following the procedures under  
12 par. (e).

13          (d) The contractor shall forward the supplier's response to the claimant. The  
14 supplier and contractor shall use their best efforts to coordinate their responses to  
15 claims and contribution claims.

16          (e) If a supplier proposes to inspect the dwelling that is the subject of the  
17 contribution claim, the contractor and claimant shall, within 15 working days after  
18 receiving the supplier's proposal, provide the supplier and its agents, experts, and  
19 consultants reasonable access to the dwelling to inspect the dwelling, document any  
20 alleged construction defects, and perform any testing required to evaluate fully the  
21 nature, extent, and cause of the claimed construction defects and the nature and  
22 extent of any repairs or replacements that may be necessary to remedy them. If  
23 destructive testing is required, the supplier shall give the contractor and claimant  
24 and all persons on whom a notice of claim or contribution claim has been served  
25 advance notice of the testing at least 5 working days before commencement of the

1 testing and shall, after completion of the testing, return the dwelling to its  
2 pre-testing condition within a reasonable time after completion of the testing, at the  
3 supplier's expense. If any inspection or testing reveals a condition that requires  
4 additional testing to allow the supplier to evaluate fully the nature, cause, and extent  
5 of the construction defect, the supplier shall provide notice to the contractor and  
6 claimant and all persons on whom a notice of claim or contribution claim has been  
7 served of the need for the additional testing and the contractor and claimant shall  
8 provide reasonable access to the dwelling. If a claim is asserted on behalf of the  
9 contractor of multiple dwellings, then the supplier shall be entitled to inspect each  
10 of the dwellings. The contractor and claimant shall provide a specific day for the  
11 inspection upon reasonable notice for an inspection or require the supplier to request  
12 in writing a date for the inspection, at least 3 working days before the inspection.

13 (f) Within 10 working days following completion of the inspection and testing  
14 under par. (e), the supplier shall serve on the contractor a notice that includes any  
15 of the offers or statements under par. (c) 1. to 4.

16 (g) If the contractor rejects a settlement offer made by the supplier, the  
17 contractor shall, within 15 working days after receiving the offer, send written notice  
18 of that rejection to the supplier. The notice shall include the reasons for the  
19 contractor's rejection of the supplier's offer. If the contractor believes that the  
20 settlement offer omits reference to any portion of the claim, or was unreasonable, the  
21 contractor's written notice shall include those items that the contractor believes were  
22 omitted and set forth the reasons why the contractor believes the settlement offer is  
23 unreasonable.

24 (h) Upon receipt of a contractor's rejection and the reasons for the rejection, the  
25 supplier shall, within 5 working days of receiving the rejection, make a supplemental

1 offer of repair or monetary payment to the contractor or serve on the contractor  
2 written notice that no additional offer will be made.

3 (i) If the contractor rejects the supplemental offer made by the supplier to  
4 remedy the construction defect or to settle the claim by monetary payment or a  
5 combination of each, the contractor shall, within 15 working days after receiving the  
6 offer, serve written notice of the contractor's rejection on the supplier. The notice  
7 shall include the reasons for the contractor's rejection of the supplier's supplemental  
8 settlement offer. If the contractor believes the supplier's supplemental settlement  
9 offer is unreasonable, the contractor shall set forth the reasons why the contractor  
10 believes the supplemental settlement offer is unreasonable. If supplier declines to  
11 make a supplemental offer, or if the contractor rejects the supplemental offer, the  
12 contractor may bring an action against the supplier for the claim described in the  
13 notice of claim without further notice.

14 (j) If a contractor accepts any offer made under this subsection, and the supplier  
15 does not proceed to make the monetary payment or remedy the construction defect  
16 within the agreed upon timetable, the contractor may bring an action against the  
17 supplier for the claim described in the notice of claim without further notice. The  
18 contractor may also file the supplier's offer and contractor's acceptance in the circuit  
19 court action, and the offer and acceptance create a rebuttable presumption that a  
20 binding and valid settlement agreement has been created and should be enforced by  
21 the court.

22 (k) If a contractor accepts a supplier's offer to repair a construction defect  
23 described in a notice of claim, the contractor, when appropriate, and the claimant  
24 shall provide the supplier and its agents, experts, and consultants reasonable access

1 to the dwelling to perform and complete the construction by the timetable stated in  
2 the settlement offer.

3 (L) If a contractor receives a written statement that the supplier rejects the  
4 claim, or if the supplier does not respond to the contractor's notice, the contractor  
5 may bring an action against the supplier for the claim described in the notice of claim  
6 without further notice.

7 (m) A contractor who is seeking contribution from a supplier and who elects to  
8 inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the  
9 inspection date and dwelling address, and whether destructive testing is  
10 contemplated, at least 5 working days before the inspection.

11 (8) FAILURE TO RESPOND TO NOTICE. If a person fails to timely respond to any  
12 notice served in a manner required under this section, then any offer made in that  
13 notice is rejected.

14 (9) LIMITATION PERIOD. If, during the pendency of the notice, inspection, offer,  
15 acceptance, or repair process, an applicable limitation period would otherwise  
16 expire, the limitation period is tolled pending completion of the notice of claim  
17 process described in this section. This subsection shall not be construed to revive a  
18 limitation period that has expired before the date on which a claimant's written  
19 notice of claim is served or extend any applicable statute of repose.

20 (10) ALTERATION OF PROCEDURE. After service of the initial notice of claim and  
21 initial contribution claim, a claimant, a contractor, and a supplier may, by written  
22 mutual agreement, alter the procedure for the notice of claim process described in  
23 this section.



**(11) APPLICATION TO OTHERS.** This section does not apply to a contractor's or supplier's right to seek contribution, indemnity, or recovery against any party other than a supplier for a claim made against a contractor or supplier.

**(12) HOMEOWNER REPAIRS.** Without giving notice under this section, a homeowner may make immediate repairs to a dwelling to protect the health or safety of its occupants.

(13) BROCHURE. The department of commerce shall prepare a brochure explaining the process under this section and shall provide that brochure to contractors.

### SECTION 3. Initial applicability.

(1) This act first applies to actions commenced on the effective date of this subsection.

**SECTION 4. Effective date.**

(1) This act takes effect on the first day of the 6th month beginning after publication.

**(END)**